

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY FAWCETT,

Plaintiff,

v.

M. FOUNTAIN,

Defendant.

Case No. 2:20-cv-7

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 involving a retaliation claim. Plaintiff and Defendant have each filed a motion for summary judgment (ECF Nos. 48 and 78). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R & R), recommending that the Court deny both motions. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration to those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff argues that the Magistrate Judge erred in determining that he is not entitled to summary judgment because no genuine issue of material fact exists. He contends that the evidence is so overwhelming that no reasonable jury could find in favor of Defendant. This Court disagrees. The parties have presented two different versions of event. According to Plaintiff, he was engaged in protected conduct when he told Defendant "wait till the inspector reads about this," shortly after

Defendant fired Plaintiff from his job assignment (ECF No. 49 at PageID.224-225). He further alleges that Defendant wrote the two misconducts in retaliation for the protected conduct (*id.*). According to Defendant, Plaintiff's comment is not protected conduct because Plaintiff made the comment in an effort to manipulate Defendant and keep the job assignment (ECF No. 53-2 at PageID.289). Defendant has also offered a non-retaliatory reason for issuing each misconduct (ECF No. 79 at PageID.464-468). As the Magistrate Judge correctly concluded, "[w]hether [Plaintiff] can ultimately establish that [Defendant] retaliated against him involves a factual determination that should not be made on a motion for summary judgment" (ECF No. 90 at PageID.607). Plaintiff's argument fails to demonstrate any factual or legal error in the Magistrate Judge's analysis or conclusion. Accordingly, this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 94) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 90) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motions for Summary Judgment (ECF Nos. 48 and 78) are DENIED.

Dated: March 18, 2022

/s/ Janet T. Neff

JANET T. NEFF
United States District Judge